IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6019 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CHANDUBHAUI ISHWARBHAI PATEL

Versus

MANUBHAI ALIAS BHAICHAND DAMODARDAS SONI SINCE DECEASE

Appearance:

MR NK MAJMUDAR for Petitioner

MR RM VIN for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/10/97

ORAL JUDGMENT

#. The petitioner, by this Special Civil Application, challenges the order of the Gujarat Revenue Tribunal dated 22.8.86, passed in Revision Application No.TEN.BA.988/83, under which the Revision Application of respondent has been allowed.

#. The facts of the case in brief are that on 28th

February 1977, the petitioner filed an application under section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as `Act, 1948') in respect of agricultural lands of Survey Nos.228, 262 and 671 situated at village Amleshwar of Bharuch Taluka, and prayed for declaration that he is lawfully cultivating the said land as a tenant. This application was registered as case No.8 of 1977. The Mamlatdar and ALT, Bharuch, under his order dated 16.1.78 came to the conclusion that the petitioner is a tenant of the land in question. Against the aforesaid order of Mamlatdar & ALT, the respondent, since deceased, now represented by his legal heirs, preferred appeal No.5 of 1979 before the appellate authority, Deputy Collector, Bharuch, who vide his order dated 16.10.79, remanded the case back to Mamlatdar to decide the matter after hearing both the sides. The petitioner, against the order of the appellate authority dated 16.10.79, filed revision application before the Gujarat Revenue Tribunal at Ahmedabad and that Revision Application came to be decided under the order dated 26.6.80. The Revenue Tribunal had set aside both the orders of the appellate authority as well as of Mamlatdar and ALT and sent the entire matter back original authority. The Mamlatdar and ALT, on remand of the matter, under his order dated 18.10.92, declared the petitioner to be the tenant of the land in dispute. This order has been challenged by deceased respondent before the appellate authority by filing appeal, being Tenancy Appeal No.1 of 1983. The appellate authority confirmed the order of the Mamlatdar and ALT under its order dated 30th May 1983. The respondent then preferred revision application being No.TEN.BA.988 of 1983, before the Gujarat Revenue Tribunal, against the said order, which came to be allowed under the impugned order on 22.8.86 and hence this Special Civil Application.

#. The learned counsel for the petitioner contended that earlier the appellate authority has remanded the matter to hold fresh enquiry in the matter but the revisional authority has restricted both the parties from producing any further evidence and the Mamlatdar and ALT was directed to decide the matter only on the basis of evidence already produced. In view of this fact, the Tribunal, in the impugned order, has committed serious illegality in remanding the matter back with direction for recording of the further evidence. It has next been contended that it is not job of the revisional authority to fill up the lacunae in the evidence of the parties for a given reason. If the evidence is not produced by one party then it may not be ground for remand of the matter.

The revisional authority has very limited jurisdiction under section 76 of the act and as such it has committed serious error of jurisdiction in remanding the matter back for recording fresh evidence.

#. On the other hand, the learned counsel for respondent has supported the order of the Tribunal.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The Tribunal has observed that prima facie where both the lower courts have given concurrent findings of facts there is very little scope for revision application being considered under section 76 of the Act, but it fall in error after recording the finding that the revisional Court can go through evidence appreciated by both the lower Courts. The revisional Court has to see only whether the findings recorded by the lower authorities are perverse or not. If it is a case of misreading or where material evidence has not been considered while giving the finding or where on the material evidence, in appreciation thereof, the authorities below have misdirected themselves, then to that extent, it is permissible to the revisional authority to go into the question of appreciation of evidence, but it cannot go on the question of appreciation of evidence as if it is an appellate authority. If that distinction is not kept in mind, then there will remain no difference in between the appellate powers and revisional powers. Concurrent finding of fact recorded by the authorities below normally should have been accepted by the revisional authority and interference with the findings could have been permissible where it is perverse or based on no evidence. While dealing with previous revision application, I find sufficient merits in the contention of learned counsel for the petitioner that, the revisional authority has made it clear that no evidence has to be taken and the matter has to be decided only on the basis of material produced on record. From the judgment of the Tribunal, I find that it has gone in the field of appreciation of evidence and what it has found is that the evidence produced by petitioner may not be sufficient to hold him to be a tenant of the land. Certain defects have been found in the evidence and certain evidence which was to be produced was stated to be not produced. The burden is stated to be on the petitioner to prove that he was the tenant. It is not the jurisdiction of the Tribunal to do advisory work. What evidence has to be produced to prove his case is matter for party concerned and the matter has to be

decided only on the basis of evidence produced by the parties. The matter may be different where some additional evidence is sought to be produced but the Tribunal could not have taken the burden of examining the matter whether some further evidence is necessary for the purpose of proving the case by a party. That is precisely what the Tribunal has done in the present case. The Tribunal has stated that though the finding recorded by both the lower authorities are concurrent, there has been substantial gap in recording the full evidence in the case, and as stated earlier in the judgment, that has been taken to be a ground for remand. I fail to see any justification in this approach of the Tribunal. In fact, the Tribunal has completely lost sight of the provisions of Section 76 of the Act, 1948, as well as its own limitation in exercise of powers of revision. Its jurisdiction is only to see whether the findings recorded by authorities below are perverse or not and if same are found perverse then only it could have interfered in the matter and after entering in the arena of appreciating the evidence it could have decided the matter on merits itself but could not have remanded the matter for the purpose of filling a lacunae in evidence of either of the party. This judgment of the Tribunal cannot be allowed to stand.

#. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Gujarat Revenue Tribunal, dated 22.8.86, given in Revision Application No.TEN.BA.988 of 1983, is quashed and set aside and the matter is sent back to the Tribunal with direction to decide the same on merits on the basis of whatever material produced by both the parties on the file of the original case in the Court of Mamlatdar & ALT. This matter is an old one and as such, it is expected of the Tribunal to decide the matter within a period of six months from the date of receipt of writ of this order. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)